

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 05-02

Z.C. Case No. 05-02

(Text Amendments – 11 DCMR)

(Residential Recreation Space Text Amendment)

January 8, 2007

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendments to Chapters 1 (The Zoning Regulations); 4 (Residential District: Height, Area, and Density Regulations); 5 (Special Purpose - SP); 6 (Mixed Use Commercial Residential District - CR); 7 (Commercial - C); 17 (Downtown Development Overlay District - DD); and 18 (Southeast Federal Center Overlay District - SEFC) of the Zoning Regulations, Title 11, DCMR, that will repeal the requirement to provide recreation space for residential and mixed-use developments.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 17, 2006 at 53 DCR 9307. The Commission took final action to adopt the amendments at a public meeting on January 8, 2007. No change was made to the proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

As part of broad amendments to the Zoning Regulations to provide for residential or mixed-use development within the commercial (C and CR) and special purpose (SP) districts, requirements for the provision of recreation space were added to the zoning regulations in the 1970s. The amount of such space required varies from zone to zone, ranging from five percent (5%) to twenty percent (20%) of the total gross residential floor area.

The Zoning Commission amended residential recreation space regulations to reduce the requirement to five percent (5%) within the Downtown Development District (DD) Overlay (Z.C. Order No. 943, July 26, 2001). A reduction to the required amount, also to five percent

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02**Z.C. CASE NO. 05-02****PAGE 2**

(5%), was also approved as part of the Southeast Federal Center (SEFC) Overlay District (Z.C. Order No. 03-06, March 8, 2004).

Initial Set Down Proceeding

In response to requests from the Commission, the Board of Zoning Adjustment ("BZA"), and the public to review and amend these regulations to be more in line with current standards and expectations, the Office of Planning ("OP") initiated this rulemaking by filing a report with the Commission. In keeping with ongoing efforts to update and clarify the Zoning Regulations, OP requested text amendments to amend and clarify existing residential recreation space provisions to:

- allow incidental and accessory roof-top enclosed areas for residential recreation space as part of roof-top structure requirements (§ 411);
- clarify and make more consistent the residential recreation space regulations within the applicable Special Purpose (SP), Mixed Use Commercial Residential (CR), and Commercial (C) Districts, including a reduction in the minimum dimension for roof-top recreation space from twenty-five feet (25') to eight feet (8'); and
- add a special exception review process for relief from residential recreation space requirements.

OP described the proposed text amendment as an interim measure intended to address specific issues related to consistency and ease of use, pending completion of an OP/Department of Parks and Recreation/National Capital Planning Commission initiative to assess park and recreation space needs and availability throughout the District.

At its March 14, 2005 public meeting, the Commission agreed to set down the case for a public hearing.

Initial Public Hearing

The Commission held a public hearing on this case on June 27, 2005.

In its testimony and in its June 17, 2005 report, OP outlined the intent of the proposed residential recreation space text amendment, described as a minor and an interim measure to address specific difficulties and inconsistencies within the regulations.

A report from the Department of Employment Services ("DOES"), indicating no concern with the proposal, was attached to the OP report. Also attached to the OP report was a memo from

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02**Z.C. CASE NO. 05-02****PAGE 3**

the Department of Housing and Community Development ("DHCD"), which indicated support for the proposed text amendment.

No Advisory Neighborhood Commission ("ANC") provided written comments or testimony regarding this proposal.

Various representatives of development companies noted the changes would constitute an improvement, but spoke in opposition to the proposal, expressing a preference for the elimination of, or reduction in, the requirement. The Committee of 100 also spoke in opposition to the proposal, noting that the regulations should remain as existing or be increased.

Second Set Down

The Commission was scheduled to take proposed action pursuant to 11 DCMR § 3027.2 at a meeting on September 15, 2005. The Commission instead elected to set down for consideration at a public hearing an alternative proposal to eliminate residential recreation space regulations in their entirety and to amend roof structure regulations (§ 411).

Subsequently, at its March 13, 2006 meeting, the Commission received a report and testimony from OP requesting that the Commission set down for a public hearing the following text amendments related to the residential recreation space requirements:

- eliminate the residential recreation space requirement for properties that would be subject to the proposed mandatory Inclusionary Zoning ("IZ") program;
- permit the replacement of recreation space with housing, provided a minimum of twenty-five percent (25%) of the space is devoted to affordable housing, for properties not subject to IZ;
- allow incidental and accessory roof-top enclosed areas for residential recreation space as part of roof-top structure requirements (§ 411);
- reduce the minimum dimension for roof-top recreation space from twenty-five feet (25') to eight feet (8'); and
- add additional clarity and consistency in wording.

OP stated that this proposal would be consistent with the Comprehensive Plan and other District goals and objectives to encourage the provision of affordable housing in the District.

At its March 13, 2006 meeting, the Commission agreed to set this proposed text amendment down for a public hearing, to be held concurrently with the hearing on the proposal to eliminate the residential recreation space regulations in their entirety. However, the Commission indicated

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02
Z.C. CASE NO. 05-02
PAGE 4

that, at proposed action, it would first consider the proposal to repeal recreation space requirements and would only consider the OP alternative if it decided to retain the provisions.

Public Hearing

The Commission held a public hearing on the two proposals for residential recreation space text amendments on November 6, 2006.

In its testimony and its October 23, 2006 report, OP outlined the intent of its proposed alternative language, the overall impact of which would be to reduce the amount of required on-site recreation space and to possibly increase the amount of housing – market rate within IZ areas and a combination of affordable and market rate in areas not subject to IZ requirements. The OP proposal continued to recommend a minor amendment to the roof-top structure requirements (§ 411) to permit incidental and accessory roof-top enclosed areas for residential recreation space, as is currently permitted only for swimming pools.

No other District agency provided a report or testimony on this case at this public hearing.

ANC 6B, in a letter dated October 11, 2006 (the date of which was corrected to October 10th in a subsequent letter), provided written comments in support of the elimination of the residential recreation space regulations.

In testimony and submissions provided to the Commission, various representatives of the development community expressed opposition to the OP alternative proposal and support for the proposal to eliminate the residential recreation space requirement.

Proposed Action

The Commission took proposed action following the public hearing on November 6, 2006 to repeal in their entirety the residential recreation space regulations and to adopt amendments to § 411 (Roof Structure) regulations as recommended by Lindsley Williams, with the option to further study these amendments prior to final action. Having decided that mandatory recreation space requirements no longer served a legitimate purpose, the Commission did not go on to consider the OP proposal to continue to impose the requirements in order to leverage additional workforce and affordable housing.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 17, 2006 at 53 DCR 9307 for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. By report dated December 15, 2006, NCPC expressed its view that the proposed amendment to repeal the residential recreation

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02**Z.C. CASE NO. 05-02****PAGE 5**

space regulations could be inconsistent with Federal and District Elements of the Comprehensive Plan for the National Capital, because it could exacerbate existing gaps in the park system and overuse of the federal park system. NCPC requested that the Commission consider reducing, rather than eliminating, the residential recreation space requirement and consider alternative programs that may be recommended by the Capital Space study, which is currently underway. Finally, NCPC concluded that proposed changes to the roof structure regulations would not be inconsistent with the Comprehensive Plan or be likely to have an adverse impact on federal interests.

No other comments were received.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed January 8, 2007 public meeting, the Commission took final action to repeal the residential recreation space regulations and to amend the roof structure regulations (§ 411). The Commission considered NCPC's advice that the residential recreation space regulations should not be repealed, but instead that the percentage of recreation space required should be reduced to a "more realistic level." The Commission was, however, unpersuaded by NCPC's advice. NCPC opined that the repeal of the residential recreation regulations could exacerbate gaps in the federal park system and could lead to the overburdening of federal parklands. Practically speaking, however, the Commission fails to see that repealing the residential recreation space regulations would likely have either effect. The Commission notes that the type of recreation space that has been provided as a result of the residential recreation regulations is quite different from that provided by local federal parklands. The former tended to be interior spaces (such as party rooms or gyms) or smaller exterior spaces (such as courtyards), usually used for passive recreation. The latter, however, are usually larger, open, outside areas, used for active recreation. The Commission also notes that, even after repeal of the residential recreation space regulations, there are still ample venues, other than federal parklands, for District residents and visitors to find recreational opportunities similar to those that were made available as a result of the regulations.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby APPROVES the following amendments to the Zoning Regulations, Title 11 DCMR:

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02

Z.C. CASE NO. 05-02

PAGE 6

- A. **CHAPTER 1, THE ZONING REGULATIONS** – Delete the definition of "Residential recreation space" from § 199.1, DEFINITIONS.
- B. **CHAPTER 4, RESIDENCE DISTRICTS: HEIGHT, AREA, AND DENSITY REGULATIONS** – Amend § 411.1 to read as follows: (Deleted wording is shown in strike-through lettering and added wording is shown bolded and underlined):
- 411.1 To exercise a reasonable degree of architectural control upon roof structures in all districts, housing for mechanical equipment, stairway and elevator penthouses, and, when not in conflict with An Act To Regulate the Height of Buildings in the District of Columbia, approved June 10, 1920 (36 Stat. 452; D.C. Official Code, §§ 6-601.01 to 6-601.09, on apartment building roofs, penthouses for (a) storage, and toilets showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on that roof; and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space, shall be subject to conditions and variable floor area ratio credit specified in this section.
- C. **CHAPTER 5, SPECIAL PURPOSE DISTRICTS (SP)** – Delete § 533, Residential Recreation Space (SP), including §§ 533.1 through 533.11.
- D. **CHAPTER 6, MIXED USE COMMERCIAL RESIDENTIAL DISTRICTS (CR)** – Delete § 635, Residential Recreation Space (CR), including §§ 635.1 through 635.4.
- E. **CHAPTER 7, COMMERCIAL DISTRICTS (C)** – Delete § 773, Residential Recreation Space (C), including §§ 773.1 through 773.10.
- F. **CHAPTER 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT (DD)**
- a. Delete § 1706.4 (f).
- b. Delete § 1706.5 (f).
- G. **CHAPTER 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT (SEFC)** – Delete § 1803.12.

Vote of the Zoning Commission taken at its public meeting on November 6, 2006 to **APPROVE** the proposed rulemaking by a vote of **4-0-1** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, to approve; John G. Parsons, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on January 8, 2007 by a vote of **4-1-0** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, in favor; John G. Parsons, opposed.)

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 05-02

Z.C. CASE NO. 05-02

PAGE 7

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register* on APR - 6 2007.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 05-02

Z.C. Case No. 05-02

(Text Amendment – Residential Recreation Space)

January 8, 2007

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 06-05

Z.C. Case No. 06-05

(Text Amendment – Repeal of Section 410)

June 12, 2006

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797 ; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Zoning Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to repeal § 410 in its entirety and remove all references to § 410 in Chapters 3, 4, 25, and 31 of the Zoning Regulations (Title 11 DCMR). Section 410 had authorized the Board of Zoning Adjustment to permit, within the R-4 and R-5 Zone Districts, construction of a group of one-family dwellings, flats, apartment houses, or a combination of these buildings, with division walls erected from the ground up or from the lowest floor up, to be erected and deemed a single building.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 10, 2006 at 53 DCR 1793. The emergency portion of that notice removed the R-4 reference in § 410, in order to safeguard the character of the R-4 Districts and ensure that their densities were protected while the Commission considered the merits of retaining § 410. As a part of that same rulemaking, the Commission also proposed, in the alternative, the repeal of § 410 in its entirety. No comments were received during the 30-day comment period and, other than adding the conforming amendments, no change was made with respect to the alternative proposal to repeal § 410 in its entirety.

These final rules will become effective upon publication of this notice in the *D.C. Register*.

Description of Text Amendment

The amendment repeals § 410 from Chapter 4 and removes references thereto from the named chapters. The text amendment was initiated by citizen petition and supported by the Office of Planning ("OP"). OP agreed with the petitioner that § 410 provided a mechanism for the introduction of apartment buildings into the R-4 District, contrary to the intent of the R-4 District as stated in § 330 of 11 DCMR, which reads, "[T]he R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts since the conversion of existing structures shall be controlled by a minimum lot area per family requirement." In

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 06-05**Z.C. CASE NO. 06-05****PAGE 2**

addition, historical research of § 410 indicated that it was the intent of the Zoning Commission in 1970 to remove the reference to the R-4 District with the attendant area and density requirements.

Although the petition focused only on the application of the section to the R-4 District, the Commission broadened the scope of the hearing to include the issue of whether the entire section should be repealed.

Relationship to Comprehensive Plan

The amendment removes § 410 from Chapter 4 and references thereto from the named chapters, because it is contrary to the intent of the R-4 District. The repeal of the section is consistent with several sections of the Comprehensive Plan, specifically those that call for stabilizing, maintaining, and improving the residential character of District neighborhoods (§§ 102, 1102, and 1104); as many of the R-4 rowhouse neighborhoods are also in historic districts, the repeal of § 410 is also consistent with § 108 of the Comprehensive Plan that calls for preserving the historic character of the District. The stabilization of the R-4 District as a rowhouse zone furthers the housing and neighborhood character goals without increasing density as called for in the Ward 1 (§ 1231) and the Ward 6 (§ 1707) Elements of the Comprehensive Plan.

Public Hearing and Proposed Action

The Commission held a public hearing on this case on May 4, 2006. Following the conclusion of the hearing, the Commission took proposed action to repeal § 410. The Commission determined that the review required by sections §§ 353 and 2516 was adequate to address any impacts of development in the R-5 Zone Districts.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report to the Office of Zoning on May 18, 2006, determined that there is no adverse impact to the Federal interests in the District.

No public comments were received.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on June 12, 2006. No substantive changes were made to the advertised text other than the inclusion of conforming amendments. The Commission also readopted the emergency rules to avoid a lapse in the application of the emergency amendments pending publication of this Final Rulemaking in the *D.C. Register*. The readopted emergency rules were at 53 DCR 5057 on June 23, 2006.

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 06-05
Z.C. CASE NO. 06-05
PAGE 3

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia and consistent with the purpose of the Zoning Regulations and the Zoning Act.

The Office of the Attorney General has determined that this rulemaking is legally sufficient.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR:

- A. Chapter 3 (R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS) is amended as follows:
 - 1. Paragraphs (a) and (c) of § 350.4 are amended by striking the phrase “§§ 353 and 410” wherever it appears and inserting the phrase “§ 353” in its place.
 - 2. Subsection 353.1 is amended by striking the phrase “ § 410 and”.
- B. Chapter 4 (RESIDENCE DISTRICTS: HEIGHT, AREA, AND DENSITY REGULATIONS) is amended by repealing § 410.
- C. Chapter 25 (MISCELLANEOUS ZONING REQUIREMENTS) is amended by repealing § 2516.8.
- D. Chapter 31 (BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE) is amended as follows:
 - 1. Section 3104.1 is amended by striking the phrase “Residential Buildings, groups of Districts R-4, and R-5-A and R-5-B Districts §§ 410.12, 410.14 and 410.16.”
 - 2. Section 3180.1(b)(4) is amended as follows:
 - (4) For a residential use in the R-5-A District under § 353 four hundred dollars (\$400) for each dwelling unit; and

Vote of the Zoning Commission taken at its public hearing on May 4, 2006 to **APPROVE** the proposed rulemaking by a vote of **5-0-0** (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve).

The Zoning Commission, at its public meeting on June 12, 2006, **ADOPTED** this Order by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Gregory N. Jeffries, and Michael G. Turnbull in favor).

Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 06-05

Z.C. CASE NO. 06-05

PAGE 4

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on APR - 6 2007.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 06-05

Z.C. Case No. 06-05

(Text Amendment – Repeal of Section 410)

June 12, 2006

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.